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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,226	12/03/2003	Eric Luo	453-016	5198

7590

02/15/2006

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EXAMINER

FIDEI, DAVID

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/727,226	Applicant(s) LUO, ERIC	
	Examiner David T. Fidei	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al (Patent no. 5,746,311). In figure 11 an apparatus is disclosed as recited in claim 1 comprising; lower compartment 430a, a plurality of sections 432, 434, at most two crevices defined by the spaced apart cut lines of lower sections 432, 434 forming a fixing segment, an upper casing 420, latch hole 421, external casing 440 and a latch plate 441.

As to claim 2, a thickness section is disclosed in figure 7 with the latch hole 221 disposed “on” the thickness section.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1, 3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al (Patent no. 3,206,018) in view of Braginsky et al (Patent no. 6,938,755). Lewis et al discloses lower compartment 39, a plurality of sections 49, a most two crevices defined by the spaced apart cut lines of lower sections 49 forming a fixing segment therebetween, an upper casing 38, latch hole 48, external casing 42 and a latch plate 47. The difference between the claimed subject matter and Lewis et al resides in the latch hole being at the intersection with said lower compartment.

Braginsky et al figure 4B discloses a latch hole 46 at the intersection with a lower compartment that cooperates with latch plate 35. To locate the locking mechanism of Lewis et al at such a position would have been an obvious matter of design choice, for the reason that the particular location of hole and plate is of no particular criticality.

As to claim 3, upper casing 38 has crevices 49.

As to claim 5, latch plates are formed by member 50 and an unnumbered plate to the left of member 50.

As to claim 6, sheet paper is disclose by Lewis in col. 3, lines 26-28.

As to claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use any material such as corrugated paper, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, see § M.P.E.P. 2144.06.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Braginsky et al (Patent no. 6,260,696). The difference between the claimed invention and the prior art resides in the upper casing having at least two through holes to form a fixing segment.

Braginsky et al figures 1-5 teaches that it is well known in the art at least two through holes to form a fixing segment. It would have been obvious to one of ordinary skill in the art to construct the upper casing with through holes, for the reason that the particular retaining means would have been an obvious matter of design choice serving no particular criticality.

7. Claims 8-10, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldsholl (Patent no. 2,964,227) in view of Brown et al (Patent no. 5,746,311). Goldsholl in figure 3 discloses an apparatus as recited in claim 8 comprising; lower compartment 44, an upper casing 46, an external casing 10 and a wrapping section 12. The difference between the claimed subject matter and Goldsholl resides in the lower compartment having a plurality of sections with at most two crevices, an external casing having a latch hole and the wrapping section having a latch plate.

Brown in figure 11 teaches an apparatus comprising; lower compartment 430a, a plurality of sections 432, 434, a most two crevices defined by the spaced apart cut lines of lower sections 432, 434 forming a fixing segment, an upper casing 420, latch hole 421, external casing 441 and a latch plate 441. It would have been obvious to one of ordinary skill in the art to modify Goldsholl by constructing the lower compartment having a plurality of sections with at most two crevices, an external casing having a latch hole and the wrapping section having a latch plate as taught by Brown, in order to form a mechanism for retaining articles within the carton.

As to claim 9, wings 32, 34 are disclosed by Goldsholl.

As to claim 10, a thickness section is disclosed in figure 7 of Brown with the latch hole 221 disposed "on" the thickness section.

As to claim 14, sheet paper is disclosed by Goldsholl in col. 2, lines 51-53.

As to claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use any material such as corrugated paper, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, see § M.P.E.P. 2144.06.

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8. Claim 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 8 above, and further in view of Braginsky et al (Patent no. 6,260,696). The difference between the claimed invention and the prior art resides in the upper casing comprises at least one set of crevices, and each set forms an upper fixing segment, a set of at least two through holes to form an upper fixing segment or the upper casing is stamped into a plurality of latch plates.

Braginsky et al figures 1-5 teaches that it is well known in the art at least two through holes to form a fixing segment, crevices or latch plates formed by members 15, 18, 25. To form such fixing segments in the device of Goldsholl would have obvious to one of ordinary skill in the art, for the reason that the particular retaining means would have been an obvious matter of design choice serving no particular criticality.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

9. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'David T. Fidei', is positioned above the printed name.

David T. Fidei
Primary Examiner
Art Unit 3728

dtf
December 19, 2005